
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 13 Case
BRUCE CHARLES BAUMAN)	
)	Number <u>93-41818</u>
<i>Debtor</i>)	

ORDER ON MOTION FOR RECONSIDERATION

On May 31, 1994, Debtor filed a Motion seeking to have this Court reconsider its Order entered on May 18, 1994, sustaining the objections of the Chapter 13 Trustee and dismissing the case. Debtor forthrightly states that he is asserting a different theory in support of his position that the plan should be confirmed than that which was previously argued. As such it would be well within my discretion to deny the motion out of hand. Out of an abundance of caution, and in the interest of judicial economy in not requiring a more protracted proceeding, however, I am considering the motion of the merits.

First, Debtor argues that "the Trustee incorrectly assumed that the tax debt

in question falls within the requirements of Section 1322(a)(2) Such is not the case." It is important to point out that neither the Trustee nor the Court made any incorrect assumption. Rather, the position which the Trustee took and the ruling of the Court was based on the claims of the Internal Revenue Service as filed with respect to which there has been no objection filed by any party in interest. Accordingly, all proceedings involving that claim must proceed under the assumption that the claim is allowed as filed. *See* 11 U.S.C. §502(a). However, even assuming that the Debtor filed a timely objection and the objection were sustained, the Debtor argues that the Internal Revenue Service debts "are nothing more than secured claims" and argues that the plan may modify the rights of holders of secured claims. While it is true that 11 U.S.C. Section 1322(b)(2) permits modification of secured creditors rights, what Debtor misapprehends is that this Court's previous order has already dealt with whether a proposal to defer full payment on the secured claim of the IRS until after completion of the plan is itself confirmable. That order clearly sets forth that a reading of Section 1322(a)(1) and 1325(a)(5) demonstrates that secured creditors must receive "value" under the plan which is "not less than the allowed amount of [the secured] claim." Matter of Bruce Charles Bauman, Ch. 13 No. 93-41818, slip op. at 8-9 (Bankr. S.D.Ga. May 18, 1994).

While Debtor is permitted to modify a secured claim, the modification

cannot extend to what amounts to an indefinite deferral. If Debtor's plan proposed to pay the secured claim in full within five years, Debtor would still be modifying the IRS's rights because, in the absence of the intervention of bankruptcy, the IRS could levy and collect on its secured claim instantly. The modification permits Debtor to make those payments in a more orderly fashion over a period of five years. However, the claim still must be paid in full within the five year period proposed by the Debtor for making payments.

The only exception to the requirement of Section 1325(a)(5)(b)(ii) is the provision of 11 U.S.C. Section 1322(b)(5) which provides that a debtor's plan may provide for curing of any default and maintenance of payments while a case is pending on any secured claim on which the last payment is due later than the date of final payment under the plan. In this case the Debtor's secured liability is due immediately and the Debtor may not avail himself of Section 1322(b)(5). Thus, any provision for modification of the secured claim is subject to the other requirements of the Code including the requirement of payment in full within the five years.

In so holding, I note that this is consistent with the rationale of unpublished rulings which this Court has made regarding specially classified unsecured claims as, for example, government guaranteed student loans and alimony and support obligations. In

these cases this Court has previously ruled, and the Trustee has consistently enforced ruling to the effect, that a plan which proposes to pay anything less than the full amount of those specially classified unsecured claims cannot be confirmed even if the Debtor agrees that the remaining balance would be excepted from the discharge.¹ The sole exception which I have recognized, with respect to government guaranteed student loans, is that the Debtor may maintain the contractual payments Debtor was obligated to make as of the filing date, if the maturity date extends beyond the life of the plan, pursuant to Section 1322(b)(5), and deal with the balance thereafter. Any treatment of these types of claims or a secured claim, other than payment in full within the plan, violates the spirit and purpose of Chapter 13, opens the possibility that the Debtor, by virtue of a subsequent filing, may indefinitely delay the realization by these creditors of what they are entitled to receive under the Bankruptcy Code, fails to comply with the provisions of Section 1325, and cannot be confirmed. IT IS THEREFORE THE ORDER OF THIS COURT that the Motion to Reconsider is denied. The case remains dismissed.

¹ This holding was based on my interpretation of 11 U.S.C. Section 1325(a)(4) in that the provision to pay minuscule amounts of these obligations and agree to a determination of non-dischargeability at the end of a five year period violates the requirement that these unsecured claimants would receive the same value on the effective date of the plan as if the debtor's estate were liquidated under Chapter 7. The rationale for the ruling is that in a fully and properly administered Chapter 7 the debtor would receive a discharge excepting the student loan and alimony or support obligations. See 11 U.S.C. §523(a)(5); (a)(8). The creditor, by virtue of the exception, would hold a fully matured non-dischargeable judgment against the debtor and would be free at that instant to pursue the debtor for collection to the full extent of state law. To interpose the automatic stay for a period of five years when full payment is not guaranteed and agree that that creditor five years hence may, if another case is not filed, have the same opportunity to collect that it would enjoy today does not meet the requirements of Section 1325(a)(4).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1994.